1952. K **File No.** Stamps II/52 (CN)

Legal Deptt

B BRANCH P.6(C)/1952

Subject:— Notifications under the Indian Stamp Act, 1899.

File No. Stamps II/52 (M)

Gen. 194

H2-B

Legal Department.

The amendment suggested by the Registrar to the draft notification would be vague as it does not state the exact date of the commencement of the proposed exemption. The Indian Stamp Act, 1899, was extended to the areas of the merged State of Barods on 30-7-1949 (vide the Baroda State (Application of Laws) Order, 1949). The retrospective effect should therefore be given from the 30th July 1949. A revised draft notification is accordingly sent herewith.

Sd/- J.R.Dhurandhar

O.C. 30/1

Additional Secretary to Government.

U.R. to D.D. No. 1591, dated the 31st January , 1952.

Mjr/2/7

4 Cs.

Legal Department.

Para 6 of R.D. note at p 54 ante:- It appears that F.D. is in favour of the suggestion made by the Superintendent or Stamps that the rates of stamp duty to be specified in Schedule II to be enacted by the State Legislature should be inclusive of surcharge, which is being levied at present under Bom XIV of 1943, as the surcharge is more or less a permanent measure. To avoid doubts and complications, this alternative is preferable from the legal point of view and may be adopted.

Para 7 at p. 54-55 ante.- If the above suggestion is adopted, no amendment will be necessary in Bom. Act XIV of 1943 but it can be repealed with effect from the date on which the amending Act proposed to be made by the Government of India Will be brought into force. Although the items "transfer of shares" and "debentures" are now included in entry 91 in List I in the Seventh Schedule to the Constitution, it would be competent to the State Government in virtue of article 277 of the Constitution of India to levy surcharge on those items till the proposed Central law is passed by Parliament and comes into force.

Para 8 at pages 55-56 ante.- There is no legal objection to adopting the suggestion made by U.S. F.D. at p. 60 ante. Parts IV and V of the Bombay Finance Act, 1932. may be repealed and those provisions, which fall within the competence of the State Legislature, may be incorporated in the new State law.

Sd/- J.R.Dhurandhar

O.C. 29/2

Additional Secretary to Government.

U.R. to R.D. No. 3391, dated the 1st March 1952.

Mjr/2/7

4 Cs.

Legal Department.

Instrument B referred to in the Additional Secretary's U.R. No 16092, dated the 10th October 1951 at pp.43-44 ante was an instrument of a transfer of shares for consideration of Rs. 1890. It was executed at Ahmedabad on 11th May 1942 and was acted upon in Baroda on 19th May 1942. Six rupees worth stamps were affixed on it; whereas the duty chargeable under the Indian Stamp Act, 1899 was Rs. 14-4-0 and according to the Baroda Stamp Act the duty chargeable was Rs. 10/- (vide sub-para (II) of R.D. note at p. 31 ante)- It is true that the Additional Secretary in his opinion at pp 43-44 ante advised that where the instrument was chargeable under both the Indian Stamp Act and the Baroda Stamp Act, the Government should charge a higher duty but should give remission in respect of the duty paid under either Act. From the R.D. draft at p 55 ante, however, it appears that the remission is given generally in respect of all instruments chargeable under both the Indian Stamp Act and the Baroda Stamp Act. The notification is not restricted to the remission of stamp duty in respect of the instrument of transfer of shares. If the intention is that under the R.D. draft the instrument of a transfer of shares also should get the benefit of the remission proposed in the R.D. draft, that object will not be achieved in view of the legal position stated in the next. para.

2. Section 9(1) of the Indian Stamp Act, 1899,,as adopted by the Adaptation of Laws Order, 1950, empowers the Government to reduce or remit, whether prospectively or retrospectively, in the whole or in part of the terriotry under the administration, the duty with which any instrument or any particular class of instrument, or any of the instruments belonging to such class, or any instrument when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, The expression "Government" has, however, been defined in the Act as

adapted by Adaptation of Laws Order, 1950, to mean, -

(a) in relation to stamp duty in respect of Bills of Exchange, cheques, promissory notes, Bills of Lading, letters of credit, insurance policies, transfer of shares, debentures, proxies and receipts , and in relation to any other stamp duty chargeable under this Act and falling within entry 96 in List I in the Seventh Schedule to the Constitution of India, the Central Government:

(b) Save as aforesaid, the State Government.

The expression "Collecting Government" occurring in section 9 has been adapted by the Adaptation of Laws Order, 1950, in view of the fact that item 91 in List I in the Seventh Schedule to the Constitution of ~~Ubdua relatubg~~ India relating "to rates of stamp duty in respect of transfer of shares etc." falls under the Central field. It is, therefore, clear that so far as the remission of duty on instruments of transfer of shares are concerned, it is the Central Government which is competent to issue order regarding remission of stamp duty thereof. The State Government will not be competent to issue any order under section 9 in respect of the instrument referred to in clause (a) of sub-section (1) of section 9 of the Indian Stamp Act.

Sd/- J.R.Dhurandhar

o..c 8/5

Additional Secretary to Government.

U.R. to R.D. No. 7356, dated the 9th May 1952.

Mjr/2/7

4 Cs.

Legal Department.

It does not a-ppear that any formal notification under section 9 of the Indian Stamp Act is necessary for the purpose which the R.D. has in view. The object appears to be to remit the duties of instruments of B class as described in para 1 (II) of the R.D. note at page 31 ante. This difference of duty is recoverable in virtue of the provisions of the Baroda Stamp Act which was the law in force when the instruments of B class were acted upon in Baroda State. Since the Baroda Stamp Act has now been repealed and since now it has been decided not to recover difference between the amount paid by the party and the amount payable under the Baroda Stamp Act, Governmen in its inherrent power can decide not to recover such difference of stamp duty. No formal notification under the Indian Stamp Act is necessary for that purpose. Before such decision is taken Government should ascertain whether it is decided to refer the matter to the Bombay High Court under section 57 of the Indian Stamp Act as desired by the Jagdish (Agency) Ltd. in their letter at page 7 ante and with reference to which application the R.L.A. in his opinion No. 1635 dated the 1st February 1952 has advised that it would be obligatory on the Chief controlling Revenue authority to take the case for the opinion of the High Court when demanded. If the High Court holds that the Bombay Government is not competent to levy stamp duty under the Indian Stamp Act, 1899,

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as contended by the Jagdish Mills, the Bombay Government should not deprive itself of the right to recover the deficiency under the Baroda Stamp Act.

Sd/- J.R.Dhurandhar

O.C. 5/11

Additional Secretary to Government.

U.R. to R.D., No. 18482/ B dated the ~~16th~~ 6th November 1952.

Mjr/2/7

4 Cs.